

January 16, 2007



**TRANSCRIPT**  
**January 16, 2007**

**MONTGOMERY COUNTY COUNCIL**

Marilyn Praisner, President  
Nancy Floreen  
Roger Berliner  
Marc Elrich

Michael Knapp, Vice President  
Phil Andrews  
George Leventhal  
Duchy Trachtenberg  
Valerie Ervin



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1 Council President Praisner,

2 Good morning, ladies and gentlemen. Welcome to the first session back for the County  
3 Council in the year 2007. Hope everyone has had a good holiday and is ready for a  
4 busy and productive new year. Our invocation this morning will be by Rabbi Greg Harris  
5 from Congregation Beth El of Montgomery Council. Welcome. Rabbi? Can we all stand,  
6 please.

7  
8 Rabbi Greg Harris,

9 Thank you very much. That's wonderful, to see new faces on the Council and to be back  
10 here again. These are words written by Rabbi Bill Rudolph, the Senior Rabbi at  
11 Congregation Beth El that I'm delivering on his behalf. O Lord, these are the shortest,  
12 darkest days of the year; but it's the man-made darkness around us that most occupies  
13 our attention: the darkness of senseless deaths in our cities and neighborhoods, the  
14 darkness of hate and genocide that is spewed abroad and brought to bear upon  
15 innocent citizens throughout the world. That darkness is deep. We live with a sense of  
16 foreboding, sometimes despair; but we can't give into that because then the haters will  
17 have won. Despair is darkness when there is no control; but there is a lot in our world  
18 over which we have control: how we live our lives, how we take care of those less  
19 fortunate, the commitment we have to building the best schools we can, how we  
20 balance justice and mercy in our government and legal systems. Our elected officials  
21 are the lights we put into our world to build it the best way we know how. Bless them, O  
22 Lord, with wisdom and compassion and a sense of the holiness of their mission which,  
23 for me and many like me, is to repair the world in Your image. Amen.

24  
25 All Council,  
26 Amen.

27  
28 Council President Praisner,

29 Thank you very much. Announcements, agenda, and calendar changes. Ms. Lauer.

30  
31 Council Clerk Lauer,

32 We have a calendar change for next week. State legislation on Monday will be at 12  
33 o'clock instead of 12:30 to allow OIR staff to get to Annapolis on an important issue. The  
34 agenda, the only change we have is the minutes that are before you actually are  
35 December 5th for approval, not the 12th. And we do have one petition that we've  
36 received. It's from residents of the County supporting a new Forest Glen Metro entrance  
37 on the eastern side of Georgia Avenue. Thank you.

38  
39 Council President Praisner,

40 Thank you. Action on approval of minutes. Madam Clerk.

41  
42 Councilmember Floreen,  
43 Move for approval.



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1 Council President Praisner,  
2 Let her tell us what they are first. (Laughter).

3  
4 Council Clerk,  
5 The minutes of December 5th for approval today.

6  
7 Council President Praisner,  
8 Okay. Minutes of December 15th, a motion made by Councilmember Floreen. Is there a  
9 second?

10  
11 Councilmember Leventhal,  
12 Second.

13  
14 Council President Praisner,  
15 Mr. Leventhal. All in favor of approval of the minutes, please indicate. Unanimous  
16 among those present. Consent calendar. Is there a motion?

17  
18 Councilmember Andrews,  
19 Motion for approval.

20  
21 Council President Praisner,  
22 Mr. Andrews. Is there a second?

23  
24 Councilmember Leventhal,  
25 Second.

26  
27 Council President Praisner,  
28 Mr. Leventhal. Any items that Council members would like to pull or comment on? I just  
29 wanted to make a comment on Item Number B. Call attention to the fact that this is  
30 Federal Aid, but it comes with a significant financial implication in both the amount of  
31 money which the County must provide for Fire and Rescue Service; but also the fact  
32 that this grant clearly phases out, and there are significant obligations. So the question  
33 of sustainability will, obviously, come up over time when we talk about this issue. Any  
34 other items on the consent calendar? Mr. Knapp?

35  
36 Councilmember Knapp,  
37 Thank you, Madam President. I just call my colleagues' attention to Item E, which is  
38 Resolution to Approve Memorandum of Agreement between Montgomery County  
39 Government and Montgomery County Volunteer Fire and Rescue Association. I know  
40 that this is a significant step forward on the part of MCVFRA and Montgomery County  
41 Government, to really have a clear relationship and goals and agreement in place, and I  
42 want to thank MCVFRA and the representatives of County government for working so  
43 diligently to reach this agreement. I know that it was herding cats many days to try and



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1 pull everyone together to get to an end point, and I know how hard you worked to get  
2 there. So I thank you all for your efforts.

3  
4 Council President Praisner,  
5 Thank you. I want to make a correction before we vote on the consent calendar. I  
6 believe I said December 15th for the minutes. The minutes are December 5th. Ms.  
7 Trachtenberg, would you like to be recorded on approval of the minutes, which we voted  
8 on before you got here?

9  
10 Councilmember Trachtenberg,  
11 Yes, I would.

12  
13 Council President Praisner,  
14 Thank you.

15  
16 Councilmember Trachtenberg,  
17 Sorry that I'm late.

18  
19 Council President Praisner,  
20 That's all right. We have the consent calendar before us. No other comments. All in  
21 favor of the approval of the consent calendar? (Show of hands.) That is unanimous.  
22 Okay. We move to Legislative Session. There's no legislative journal, is that correct?  
23 We have two bills for introduction: Expedited Bill 1-07, Condominiums - Conversion of  
24 Rental Housing - Extended Tenancies, which I am sponsoring. I just want to make a  
25 comment that this comes out of conversations that the previous Council had about  
26 efforts to protect residents of the apartment complexes as they might go condominium,  
27 and also was intended to reflect recommendations from the Department of  
28 Housing/Community Affairs as to the income levels issue. As I understand it, we have  
29 not yet gotten any feedback from the Department on the income level or suggestions.  
30 So in introducing the legislation, I just want to make note of that fact and hope that the  
31 Department can get us their thoughts as quickly as possible so that we can have both  
32 the public hearing, which is scheduled for February 6th at 1:30 p.m., and the Committee  
33 discussions with the benefit of their expertise associated with it. There being no other  
34 comments, the Bill is introduced. The second session is -- second item is Expedited Bill  
35 2-07, Labor Relations - Permanent Umpire, as sponsored by the Council President at  
36 the request of the County Executive. Public hearing for this legislation is scheduled for  
37 February 6th, again, at 1:30 p.m. Are there any comments or questions? If not, we  
38 stand in recess until 1:30 when we have public hearings. Thank you.

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1 Council President Praisner,  
2 Good afternoon, ladies and gentlemen.  
3 This is a public hearing on a special appropriation to the FY07 Operating Budget of the  
4 Department of Correction and Rehabilitation for Detention Services at the Montgomery  
5 County Correctional Facility, in the amount of \$759,730. A Public Safety Committee  
6 worksession is tentatively scheduled for January 18, 2007. The record will close at the  
7 end of the hearing. Before beginning your presentation, please state your name clearly  
8 for the record. There are no speakers for this hearing.

9 Good afternoon, ladies and gentlemen

10 This is the public hearing on Zoning Text Amendment 06-25, Signs - Generally and Arts  
11 Districts, which would confirm the signs not authorized by the Zoning Ordinance are  
12 prohibited; confirm that the prohibition on offsite signs applies to signs that refer to a  
13 location, person, entity, product, business, message, or activity that is not connected  
14 with the property where the sign is located; delete regulations related to holiday signs;  
15 establish standards for signs in an urban renewal area located in an arts and  
16 entertainment district; and generally amend sign requirements. Persons wishing to  
17 submit additional materials for the Council's consideration should do so before the close  
18 of business on January 19th, 2007. The Planning, Housing, and Economic  
19 Development Committee work session is tentatively scheduled for January 29th at 2:00  
20 p.m. Please call 240-777-7900 to confirm. Before beginning your presentation, please  
21 state your name and address clearly for the record and spell any unusual names. We  
22 have three speakers for this hearing: Greg Russ, speaking for the Planning Board, who  
23 will also speak on agenda items 7 and 8; William Kominers for Finmark Management;  
24 and Barbara Henry for Discovery Communications. You can all come up at one time.  
25 Greg, do you want to start?

26  
27 Greg Russ,

28 Thanks. Thank you, Council President. For the record, Greg Russ, representative of  
29 Montgomery County Planning Board. The Planning Board reviewed Zoning Ordinance  
30 Text Amendment Number 06-25 at its regular meeting on January 11, 2007. The Board,  
31 by a vote of 5-0, is in general agreement with the proposed Text Amendment, with one  
32 modification. The one change is to the proposed definition of "property. " In effect, the  
33 change allows all site signs to be erected only if approved by the Sign Review Board as  
34 part of a sign concept plan. The proposed Text Amendment as introduced confirms that  
35 signs are not authorized by the -- that are not authorized by the Zoning Ordinance are  
36 prohibited; confirms the applicability of the offsite sign prohibition; deletes regulations  
37 related to holiday signs; and establishes standards for signs in an urban renewal area in



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1 an arts and entertainment district. The Board believes that providing methods for  
2 stimulating and/or maintaining the economic viability of these locations is a major goal  
3 of both the Arts and Entertainment District's legislation and the Urban Renewal  
4 Program. and thus recommends approval of the flexibility proposed in this legislation.  
5 Under the "Exempt Signs" category, holiday signs are proposed to be removed from the  
6 list of exempt signs since recent court decisions prohibit sign provisions that are based  
7 on the content of the signs. These types of signs are inclusive in the exemptions for  
8 adornment and decorative signs and, therefore, continue to be exempt.; however, the  
9 Board believes that the County Council should clarify whether the term "seasonal  
10 decoration," which is within the definition of adornments and decoration, passes the test  
11 of content neutrality. As for Zoning Ordinance Text Amendment Number 06-26, the  
12 Planning Board reviewed this on January 11th as well; and the Board recommends the  
13 proposed Text Amendment be denied based on the following reasons. In consistency  
14 with long-standing zoning and the development review process, it deemphasizes  
15 guidance in the applicable "master" or "sector" plan; and it contains broader scope with  
16 potential unintended consequences. The subject Text Amendment would exempt  
17 existing commercially and industrially zoned land at the time of rezoning application  
18 from a development plan finding of substantial compliance with the use and density  
19 recommended by a master or sector plan. The Board has major concerns with  
20 conflicting zoning policy being established by permitting the development plan process  
21 to exempt certain zones from master plan compliance when several of these zones  
22 specifically require a master plan recommendation. In many cases, master plans have  
23 specific written recommendations for properties or areas within the plan resulting from  
24 citizen and public official collaborations. In these cases, it is clear that the subject Text  
25 Amendment could circumvent the land use and density policies established for the  
26 properties. It would not be unreasonable to assume that the proposed Text Amendment  
27 could impact most County master plans or sector plans since most have both  
28 commercial and Industrial properties within their areas. The Board does not support  
29 such a broad scope recommendation, especially with the possibility of unintended  
30 consequences throughout the County. Furthermore, it is unclear how the proposed Text  
31 Amendment relates to those properties that also must adhere to the subdivision review  
32 procedures where substantial conformance to the applicable master plan is required.  
33 However, the Planning Boards does acknowledge that in some situations, a limited  
34 master plan amendment process would be beneficial. As such, the Board will be  
35 exploring various techniques, including a limited master plan provision, to address land  
36 use and zoning compatibility issues. And finally, Zoning Text Amendment Number 06-  
37 27, the Planning Board reviewed this Text Amendment as well on January 11, 2007;  
38 and the Board recommends approval of the Text Amendment as introduced and  
39 included in the attached Technical Staff Report. My staff report is part of your record.  
40 Thank you.

41  
42 Council President Praisner,  
43 Thank you very much. Mr. Kominers.  
44





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1 William Kominers,

2 Good afternoon, Madam President and members of the Council. My name is William  
3 Kominers. I'm an attorney with Holland & Knight representing Finmark Management this  
4 afternoon. They are the management company for the Orchard Center at Cherry Hill  
5 Road between Broadbirch Drive and Plum Orchard Drive. And I'm here because of the  
6 law of unintended consequences. This Text Amendment accidentally, I believe,  
7 prohibits certain offsite signs that are, in fact, offsite but are still on project, if I can  
8 characterize it that way. The Orchard Center, as an example, is a shopping center that  
9 has a number of inline stores and five independent pad sites; and it has two pylon signs  
10 at each entrance -- at Cherry Hill Road, at the intersection with Broadbirch, and one at  
11 Plum Orchard Drive --that identify a number of the stores at the Center including Target,  
12 Kohl's, and so forth. But, this shopping center is not one parcel; it's not one lot. It's made  
13 up of a series of lots. Each one of the inline stores owns its own parcel, and each one of  
14 the pad sites owns their own parcel. So the pylon signs necessarily sit on two of the pad  
15 sites' lots. And so by identifying Target, which is on a different lot, they are in fact  
16 identifying something that is offsite although it's on the project. This was -- these were  
17 approved as part of a sign concept plan in the Ordinance, which is called for for large  
18 commercial centers where they want to have more than 800 square feet of signage; and  
19 so I think the Amendment inadvertently failed to recognize that, and would prohibit  
20 them. So what we have proposed, on page 2 of my letter, is a change in the definition of  
21 "property." for the purposes of what's on the property or not the property. to include land  
22 that is subject to a sign concept plan. So that when you look at that sign concept plan,  
23 as DPS and the Sign Review Board are required to do as part of their variance  
24 proceeding, that would be allowed to have those signs as a part of that sign concept  
25 plan even if the lots were not owned by the same person or lots' ownership was  
26 changed over time. A similar situation -- that you've received a letter from Mr. Robby  
27 Brewer about -- is the adjoining West Farm Technology Park, which also has a number  
28 of building identification signs at the entrances to the Park where it directs people to  
29 different buildings. Obviously, the buildings are on other lots within the project. That,  
30 too, was approved as a part of the sign concept plan and would fit within this change in  
31 the definition. And I've attached to my letter a copy of the tax map showing the different  
32 lots at Orchard Center and a copy of the excerpt from the sign concept plan showing  
33 where those pylon signs are, and the same thing with respect to West Farm Technology  
34 Park, showing an excerpt of the concept plan of where those site directional signs are  
35 and some language about the hierarchy of signs looking for building identification. So  
36 we mentioned this to the Planning Board. They agreed, as Mr. Russ suggested, to  
37 remedy this anomaly; and we've tried to do it in a way that doesn't affect other matters  
38 with respect to offsite signs. Thank you very much.

39  
40 Council President Praisner,  
41 Thank you. Barbara Henry

42  
43 Barbara Henry,



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1 Hello, I'm Barbara Henry. I'm the Director of State and Local Government Relations and  
2 Public Policy for the Discovery Channel. We're at One Discovery Place in Silver Spring.  
3 I'm sure you all know where that is. I sort of feel that on this day of extremely lofty  
4 matters that I'm here for comic relief. So I hope you'll bear with me. (Inaudible) penguin.  
5 (Laughter) Close. I want to thank you for this opportunity to speak about Zoning Text  
6 Amendment 06-25. You all probably know that when Discovery moved to Silver Spring,  
7 one of the things that all of us -- the County, Discovery, AFI, and most of the community  
8 -- agreed to was that we would try to create Silver Spring as a media Mecca. You may  
9 not know that since we've been there, in four-plus years, more than 30 media-related  
10 companies have moved to Silver Spring -- and that area includes White Oak and Tech  
11 Road. In addition, Discovery and AFI decided that we would try to serve as the  
12 foundation of Silver Spring's Arts and Entertainment District; and contributions to the tax  
13 revenues of the County from participants and visitors to Silver Docks and to our Shark  
14 Event are in sharp contrast to the situation Silver Spring faced seven or eight years ago.  
15 So all of those things that all of us have worked so hard to create in Silver Spring are  
16 actually coming to fruition. I'm sure you're probably aware of these two highly-visible  
17 events we undertook last year --as a reminder, I've provided pictures of our media  
18 company, so pictures are our stock and trade: the Silver Docks promotion ,which took  
19 up most of the front of Discovery's building last June; and Discovery's shark installation  
20 in June, which turned the majority of our building into an enormous shark. . Discovery  
21 has documented that the shark received over 4.5 million media hits from the legitimate  
22 press and from the Internet nationally and internationally. The Text Amendment  
23 responds to challenges we and AFI have faced in efforts to creatively heighten the  
24 awareness about the Arts and Entertainment District in Silver Spring. The current sign  
25 regulations permit neither of these installations. So last year, we were allowed to  
26 proceed with the Shark and the Silver Dock's promotion through a Memo of  
27 Understanding with the County. This Amendment before you would allow us to do  
28 similar displays in the future without going through this type of extraordinary process.  
29 Discovery is a media company -- which certainly makes us a fish out of water, not only  
30 in Montgomery County but in the state of Maryland. Sorry, I couldn't resist. (Laughter.).  
31 If we were in New York or Los Angeles, where all of our sister companies are,  
32 Discovery would be an oddity were it not to take an active role in these kinds of  
33 marketing opportunities. Currently, however, we find ourselves required to impose upon  
34 precious County resources in order to concoct reasons and events that make these  
35 allowable. I am hopeful that you will see the value of these promotional installations to  
36 Silver Spring and to the County, and that you will act favorably on the Zoning Text  
37 Amendment. Thank you very much.

38 Council President Praisner,

39 Thank you. Ms. Floreen.

40  
41 Councilmember Floreen,

42 Thank you, Madam President. Mr. Russ, does the Planning Board have an alternative  
43 term for "seasonal" that's not content neutral? Isn't "seasonal" pretty content neutral?





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1 Greg Russ,

2 Well, the question bounced around a number of times on Thursday; but I think their  
3 main focus was, Please take it back to the County Attorney to make sure that it is of, I  
4 guess, consistency with any other content-neutral language. And that's where they left  
5 it. No, they did not have additional language for that.

6  
7 Councilmember Floreen,  
8 Yes.

9  
10 Greg Russ,

11 And, really, it's more the legal side from the County Attorney's standpoint; if they feel  
12 that the language is content neutral, then the Planning Board was okay with it.

13  
14 Councilmember Floreen,

15 Okay. And, Mr. Kominers, the project that you're referring to is not subject to site plan or  
16 anything like that?

17  
18 William Kominers,

19 It is subject to site plan review and obtained a site plan approval. There have been  
20 amendments for each of the individual pad sites that came along; but because they're  
21 separate lots, you have the offsite situation. Likewise, at West Tech, a portion of it is  
22 subject to site plan review because the portion is in the I-3 Zone. The portion of the I-1  
23 Zone is not subject to site plan review. So that's the situation.

24  
25 Councilmember Floreen,

26 So, it's the definition of "offsite"?

27  
28 William Kominers,

29 Correct.

30  
31 Councilmember Floreen,

32 That's really the problem.

33  
34 William Kominers,

35 Yes. And your staff asked us to look at -- rather than addressing a definition of "offsite" -  
36 - address the definition of "property" because they've -- in dealing with the definition of  
37 "offsite," they've said "off the -- something that is not on the property." And so, if we  
38 address the definition of "property" and include within that definition all the land subject  
39 to a sign concept plan, then we'll solve their problem.

40  
41 Councilmember Floreen,

42 All right. Well, that's why I asked you about site plan because it does currently --

43  
44 William Kominers,



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1 It does cover site plan, but you don't necessarily -- I mean you could have lots of  
2 shopping centers that don't have site plan review.

3  
4 Councilmember Floreen,  
5 Yeah. Yeah. Okay.

6  
7 William Kominers,  
8 Or Industrial parks. I mean that's --

9  
10 Unidentified  
11 Yeah. All right. Thanks.

12  
13 Council President Praisner,  
14 Mr. Andrews.

15  
16 Councilmember Andrews,  
17 So, Barbara, I've got to ask. Regarding the inflated shark, was Discovery satisfied with  
18 the bite for the buck?

19  
20 Council President Praisner,  
21 (Laughter) Microphone, Barbara, please.

22  
23 Barbara Henry,  
24 I'm hoping it will come back this year. It may not. It may be at another location. This year  
25 is Discovery's -- is Shark Week's 20th anniversary.

26  
27 Councilmember Andrews,  
28 Mm-hmm.

29  
30 Barbara Henry  
31 So I'm hoping for a little party hat and one of those little (gesturing) -- (Laughter)

32  
33 Council President Praisner,  
34 Mr. Berliner.

35  
36 Councilmember Berliner,  
37 With respect to 06-25 --

38  
39 Council President Praisner,

40  
41 Mike (microphone).

42  
43 Councilmember Berliner,



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1 Oh, I'm sorry. With respect to 06-25, Mr. Kominers, do I understand that your proposed  
2 language with respect to "project" now conforms identically with the recommendation of  
3 the Planning Board?  
4

5 Greg Russ,  
6 That is correct.  
7

8 Councilmember Berliner,  
9

10 And, therefore, there is no disagreement on this in any way shape or form?  
11

12 Greg Russ,  
13 None.  
14

15 William Kominers,  
16 The only thing that I would point out, the Planning Board did agree to propose the  
17 language that I presented to them as a talking point, because obviously they had not  
18 had a chance to look at it sufficiently. In my letter, you'll see I modified it a little bit to  
19 break the sentence down into two clauses because I think it's -- I think there's a  
20 distinction there that is what was intended because you might have parcels that are  
21 under common ownership, common control, and so forth, that then change from that  
22 situation. But if they're under -- so they might not qualify then once that change occurs.  
23 If they're still under the sign concept plan, if they were approved that way originally, then  
24 a change in ownership among them would not make a difference. And so in talking with  
25 everyone, I thought that those two components were meant to address two separate  
26 situations; and so to avoid confusion, at least in my mind, I proposed making it (a) and  
27 (b), so they clearly stand by themselves.  
28

29 Councilmember Berliner,  
30 And the Planning Board is comfortable with that?  
31

32 Greg Russ,  
33 Yes, we are.  
34

35 Council President Praisner,  
36 Okay. I see no other questions. Oh, next one. Okay, you are trying to get ahead. Okay.  
37 All right. Thank you all very much. Greg, don't go anywhere because we may have  
38 questions on the other ZTAs that you've already testified on.  
39

40 Unidentified Speaker,  
41 (Inaudible) -- letter?  
42

43 Council President Praisner,  
44



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1 Yeah. Would you please? Just give it to Jeff. Thank you. Good afternoon, ladies and  
2 gentlemen. This is a public hearing on Zoning Text Amendment 06-26, Development  
3 Plan Findings - Amendments, which would exempt commercially and industrially zoned  
4 land from a development plan finding of substantial compliance with the use and density  
5 recommended by a master plan or sector plan and generally amend development plan  
6 requirements. Persons wishing to submit additional material for the Council's  
7 consideration should do so before the close of business on January 23, 2007. The  
8 PHED Committee work session is tentatively scheduled for February 5th at 2 p.m.  
9 Persons who want to confirm that schedule should call 240-777-7900. Before beginning  
10 your presentation, please state your name and address clearly for the record and spell  
11 any unusual names. We obviously have a very experienced panel since everybody  
12 came up before I called you. (Laughter) Our speakers -- and they're ready! Yes. The  
13 speakers are: Jim Humphrey from Montgomery County Civic Federation; Jody Kline,  
14 speaking as an individual, who also plans to speak on agenda item Number 8; Natalie  
15 Goldberg for the Garrett Park Estates-White Flint Park Civic Association -- I don't see  
16 Ginny Barnes for West Montgomery. Someone here speaking out for West  
17 Montgomery? No? Keith Miller for the Revenue Authority, and Meredith -- right? We  
18 have you down for the -- for item Number 8. Were you supposed to be speaking on  
19 Number 7? Is that it? I can move you. It's just that we have you signed up on item  
20 Number 8.

21  
22 Meredith Saini,  
23 It's sort of like both.

24  
25 Council President Praisner,

26  
27 Well, why don't you speak to both -- you want to speak -- why don't you speak now,  
28 since you're speaking, on 7; and you can do the same thing Mr. Kline is doing if you  
29 have comments on 8.

30  
31 Meredith Saini,  
32 Okay.

33  
34 Council President Praisner,  
35 Okay? And I wasn't sure whether someone from the League of Women Voters was  
36 going to testify. No? Yes? No.

37  
38 Unidentified Speaker,  
39 Someone's here, but we don't have testimony.

40  
41 Council President Praisner,  
42 You don't have testimony. Okay, Mr. Humphrey, you're first.

43  
44 Jim Humphrey,



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1 Thank you, Madam President. It's my pleasure to be testifying before you for the first  
2 time -- before you and the new members of the Council as well as the incumbents from  
3 the previous Council. I'm Jim Humphrey. I live at 5104 Elm Street in Bethesda,  
4 Maryland. I'm testifying on behalf of the Montgomery County Civic Federation as Chair  
5 of their Planning and Land Use Committee. We urge the Council to not approve Zoning  
6 Text Amendment 06-26. This legislation would exempt development plans for rezoning  
7 of properties currently zoned in either "Commercial" or "Industrial" category from the  
8 existing requirement for a finding that they are in substantial compliance with the  
9 applicable master plan. MCCF supports and defends the master planning process as  
10 the primary vehicle available to residents to help decide the future of their communities.  
11 Therefore, the impact of this ZTA, which would be to validate disregard for master  
12 plans, is one that we strongly oppose. Generally, when a master plan calls for the  
13 rezoning of a commercial or industrial site, the recommendation is to place it in a  
14 category with flexible zoning standards, such as the Plan Development Zone. Since the  
15 parameters of these flexible zones are established during development plan approval,  
16 our master plans traditionally go to great length in recommending suitable standards --  
17 land use, density, height, and others -- to be applied to these properties during the  
18 rezoning process. It does not make sense, then, to do away with the existing  
19 requirement that this Council, prior to approving a developing plan, must find it to be in  
20 substantial compliance with the applicable master plan. To do so would undermine the  
21 value and significance of citizen participation in master planning. The ZTA threatens the  
22 reliability of master planning as a process for setting the parameters for allowable future  
23 development of our communities on which residents, property owners, and developers  
24 can depend; and it is inconsistent with the County's longstanding zoning and  
25 development review process. The delegates at the January 8th Civic Federation  
26 Assembly voted unanimously to oppose passage of the legislation, and so I urge the  
27 Council to not approve this ZTA 06-26. I do want to thank the sponsor, Councilmember  
28 Knapp, for offering to meet with representatives of the Federation on the legislation. We  
29 just did not have the time to do so prior to today's hearing; but we would certainly, you  
30 know, meet at the nearest mutually-agreeable date if you still want that to occur. I  
31 would, therefore, recommend on that issue that in order to help the Civic Federation  
32 members and Executive Committee in discussing the relative merits of legislation, if the  
33 sponsor would provide the purpose and intent of the proposal to the Federation so we  
34 understand the rationale behind the introduction. I would, therefore, recommend on that  
35 issue that in order to help the Civic Federation members and Executive Committee in  
36 discussing the relative merits of legislation, if the sponsor would provide the purpose  
37 and intent of the proposal to the Federation so we understand the rationale behind the  
38 introduction. Thank you.

39  
40 Council President Praisner,  
41 Thank you. Mr. Kline.

42  
43 Jody Kline,



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1 Good afternoon. My name is Jody Kline, I'm a land use attorney with the law firm of  
2 Miller, Miller & Canby with offices at 200-B Monroe Street here in Rockville; and I'm sure  
3 the sponsor's saying, "What's Mr. Kline up here for? He's got no dog in this fight at all."  
4 And that's true; I actually have no particular interest in the Text Amendment itself,  
5 except that it's –

6  
7 Unidentified Speaker,  
8 Get out of here. (Laughter)

9  
10 Jody Kline,  
11 This is a slow day.

12  
13 Council President Praisner,  
14 Well, Jody, unless you want your time used by banter, you better continue.

15  
16 Jody Kline,  
17 Ms. Barnes said, "Well, you wrote it; didn't you?" No. As a matter of fact, I didn't at all;  
18 but I did see an opportunity in the Text Amendment for the five of you who wrestled with  
19 Zoning Application G-841 that was kind of the genesis of the Text Amendment, and for  
20 the four of you who were lucky enough not to be here at that point in time, it had, to use  
21 Mr. Kominer's words, maybe some "unintended consequences" because that case was  
22 a HE Zoning Application which the Council, in its wisdom, decided to deny. But there  
23 were other cases in the pipeline, which I will say were "distinguishable," that kind of got  
24 caught at the same point in time. I'm not going to go into any details because of your ex  
25 parte rules; but suffice it to say that there was elements of those other cases that were  
26 worthy of consideration by the Council. And G8 -- the decision on G-841 basically has  
27 stalled all those things. The issue of the conformance and the compliance and the  
28 substantial compliance to the master plan is something that I think is worthy of being  
29 addressed by the Council. It may not be Text Amendment 06-26, but it's still something  
30 that should be looked at. And we're in the process of trying to get some traction at the  
31 Planning Board level to bring something to you that I'll call "a more surgical Text  
32 Amendment" that's less broad, that would possibly allow some applications that  
33 generally most people would say make sense, and allow it to move forward. And I --  
34 going back to my initial comment, I guess this is really here kind of as a "heads up" to  
35 tell you that's something I hope will be brought to you in the foreseeable future and that  
36 you take a look at and give it serious consideration -- if it can get to your desk. Ms.  
37 Praisner, I don't have any comments on Number 8, but thank you very much.

38  
39 Council President Praisner,  
40 Oh, okay. Thank you. Natalie Goldberg.

41  
42 Natalie Goldberg,  
43 President Praisner, members of the County Council, I'm Natalie Goldberg. I reside at  
44 11111 Jolly Way, Kensington, Maryland; and I'm here representing Garrett Park





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1 Estates-White Flint Park Citizens Association. We are opposed to Zoning Text  
2 Amendment 06-26. This is really a process issue and an issue of whether or not you  
3 support the master plan process. We believe that use and density for new development,  
4 as specified in the master plan or the sector plan, should be followed for all rezoning  
5 applications regardless of the type of existing zoning that the development plan  
6 addresses. We would point out that there's a large amount of commercial property in the  
7 North Bethesda area that is recommended for future TSM zoning. Thie White Flint  
8 sector plan is very specific about the recommended 2.0 FAR, with a maximum cap  
9 specified and proportions of commercial to residential clearly detailed. This ZTA would  
10 render those specifications meaningless and allow development far beyond what the  
11 sector plan envisioned. Even though the White Flint sector plan is being redone and we  
12 have no knowledge of whether or not these limitations will remain, if the master plan or  
13 sector plan is to have any value, then the specifications that are incorporated in the plan  
14 should be adhered to. Thank you for considering the effect of this ZTA on our  
15 neighborhood.

16  
17 Council President Praisner,  
18 Thank you. Ginny Barnes.

19  
20 Ginny Barnes,  
21 Good afternoon, ladies and gentlemen –

22  
23 Council President Praisner,  
24 Ginny, could you turn the mike towards you so it's –

25  
26 Ginny Barnes,  
27 and new members of the Council. Welcome. I'm here representing the West  
28 Montgomery County Citizens Association. We are strongly opposed to this ZTA for  
29 several reasons. We object on principle to exempting development plans from  
30 compliance with area master plans or sector plans. We believe that this proposal  
31 creates a dangerous precedent which, if granted, would encourage others to seek  
32 similar exceptions. It would weaken the very concept of master plans and the zoning  
33 process as reliable planning tools which the residents have a right to rely upon and for  
34 which Montgomery County is a leader in the nation. This particular parcel has an  
35 additional burden that such a change could have on the viability of the Airpark itself. As  
36 you know, this property has been zoned "Industrial" because of the effects produced by  
37 low-flying aircraft and the various difficulties and hazards which are inherent in  
38 operating an airport. Clearly, residential housing would rapidly endanger the viability of  
39 the airport and would seem to be entirely counterproductive. On January 11th, the  
40 Planning Board unanimously voted to affirm their staff recommendation for denial of this  
41 ZTA. We provided a letter to Chairman Hanson supporting the staff's conclusions. While  
42 this ZTA may be well meaning, we believe the scope of unintended consequences to  
43 Montgomery County residents and their master plans is disastrous. We urge you to  
44 support the Planning Board's decision and reject this proposal. And I'm going to take off



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1 my hat as West Montgomery Representative and be your gentle auntie, Mr. Knapp, and  
2 suggest that with all due respect to you, I think it would be really helpful to run this up  
3 the citizen activist flagpole, especially those of us who defend our master plans like the  
4 Bible; because, you know, otherwise, you don't know whether the stripes are on right --  
5 on the flag. And also because it bothers me to think how much time -- staff time at the  
6 Planning Board, at the staff level, at the -- and the Planning Board's time, and people  
7 like myself's time to come out here and, you know, oppose your Amendment when I  
8 might not oppose your idea. So just take that with the intention it was meant for, okay?  
9 Thank you.

10  
11 Council President Praisner,  
12 Mr. Miller.

13  
14 Keith Miller,  
15 Good afternoon. Keith Miller, Executive Director of the Montgomery County Revenue  
16 Authority. Thank you for having me this afternoon. Although the Revenue Authority does  
17 not normally comment on zoning text amendments or land development, we feel this  
18 Amendment has a potential for direct impact on the Montgomery County Airpark's  
19 operation. Our concern is based on the property surrounding the airport; specifically, the  
20 WEB tract parcel, which is currently zoned I-4, "light industrial use." This zoning was  
21 developed originally for the properties impacted by the airport in order to ensure  
22 compatible use of the land surrounding the Airpark. As the owner and operator of the  
23 airport, the Revenue Authority has an obligation to protect the airport and its users.  
24 Additionally, we have a duty to the FAA to ensure that the land use surrounding the  
25 airport is compatible and to prevent the establishment of potential future hazards. We  
26 feel that the approval of Zoning Text 06-26 could potentially allow developers to change  
27 the I-4 zoning surrounding the airport without full consideration of the master plan. Such  
28 a rezoning of the property around the airport could be considered a violation of the  
29 Revenue Authority's grant assurances for funding received by the FAA. In summary,  
30 considering the above, the Revenue Authority's opinion is that the Zoning Text  
31 Amendment should not be approved as written. This would help to ensure that the  
32 property surrounding the airport remained in compatible uses, avoid possible impact on  
33 existing and future FAA funding for the airport, and to minimize potential hazards to the  
34 flying public and those on the ground surrounding the airport. Thank you.

35  
36 Council President Praisner,  
37 Thank you. Meredith.

38  
39 Meredith Saini,  
40 Good afternoon. My name is Meredith Saini, and I'm a flight instructor at the  
41 Montgomery County Airpark in Gaithersburg. I'm here today on behalf of the  
42 Montgomery County Airport Association, which represents more than 400 pilots and  
43 other users of the Airpark. Last summer, our Association expressed significant concerns  
44 about proposed zoning text changes that were aimed at permitting the use of the so-



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1 called "WEB tract" for a planned retirement community. Because ZTA 06-26 and 06-27 -  
2 - the next agenda item -- taken together are designed for the same purpose, we are  
3 once again here today to express those same concerns. The Association believes that  
4 any further residential development near the Airpark will have significant negative  
5 consequences, both for the airport users and for those who choose to live in its  
6 immediate vicinity. Under ZTA 06-27, the WEB tract could be eligible for PRC  
7 development. We have no doubt that residents would complain about airport noise, as  
8 many departing aircraft would have no alternative but to fly directly over their living  
9 rooms. In bad weather, all approaching aircraft would descend to within a few hundred  
10 feet of people's -- a few hundred feet of people's rooftops, as portions of the WEB tract  
11 are located as close as 900 feet from the end of the runway. If this approach path were  
12 to be compromised, the airport would cease to be viable as a destination for business  
13 aircraft, threatening one of the County's most valuable economic development assets.  
14 While we understand the desire of the County to clarify PRC zoning requirements, we  
15 believe the primary reason this legislation is being brought forth now is because there is  
16 an interest in residential construction on the WEB tract. As far as we are aware, there is  
17 no other parcel in the County under activer consideration for a PRC. We believe that if  
18 there were a viable PRC development proposal and a suitable site in the County, the  
19 Council would then be able to consider and approve zoning text changes to permit such  
20 development.. Until then, the County should defer any PRC zoning text changes. With  
21 regard to 06-26, our Association supports the Planning Board's recent recommendation  
22 to reject ZTA 06-26. As was noted, the Gaithersburg master plan specifically  
23 recommends against residential development on the WEB tract. Thus, any attempt to  
24 rezone this property for residential development is contrary to the intent of the master  
25 plan. Thank you for your time.

26  
27 Council President Praisner,

28 Thank you very much. Let me just make a couple of comments -- or questions that I  
29 have for you, Greg, as the PHED Committee starts to discuss this. Obviously, there are,  
30 in the broad sense, potentially master plans where over time one might want to modify  
31 what it says in the master plan. And the alternatives for that process, whether one has  
32 this Zoning Text Amendment in front of it or no zoning text amendment in front of it, the  
33 question is, as you said earlier, a "limited master plan process," which I guess we have  
34 had conversations with the Planning Board about consideration, rather than hopefully  
35 not going to spot zoning or rezoning. How soon, or in what context, are we likely to see  
36 that recommendation from the Planning Board -- of an approach that would allow the  
37 community and property owners to discuss, perhaps, modifications based on what we  
38 know now or what might be proposed, that would allow us an option that is not to throw  
39 away master plans broadly -- which is, in my humble opinion, what this Zoning Text  
40 Amendment suggests. So I think we're all -- or at least some of us are anxious to  
41 grapple will alternatives and waiting for the Planning Board on this process to weigh in  
42 before Council members do it instead. So do you have any sense of timing, or should I  
43 reserve that for a conversation with Mr. Hanson next time I see him?



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1 Greg Russ,

2 Definitely, reserve it for that. (Laughter) If given that option, that's the way he's going to  
3 go. However, I must mention that the Planning Board did voice issues related to this at  
4 their meeting on Thursday, and they were pretty adamant that this is one of those  
5 issues that they were wanting to take up very soon. I mean, now -- as opposed to in the  
6 next six months -- but something to address now.

7  
8 Council President Praisner,

9 And in your view, personal or Planning Board view, can one -- since we haven't had the  
10 hearing on the PRC standards -- can one bifurcate the issue and deal, since they were  
11 introduced together simultaneously, but there are issues associated with the PRC that  
12 carry over from the last time this Council dealt with it, in your view or the Planning  
13 Board's view, since you recommend approval of the PRC, is it their intent -- that we  
14 would go forward with the PRC changes but not with the ZTA we're discussing in this  
15 hearing?

16  
17 Greg Russ,

18 That's correct. The Planning Board believed that the PRC, 06-27, could definitely stand  
19 alone. Mainly, the changes that are proposed here are changes that were actually  
20 approved back in 2002 -- most of them. So definitely two separate issues here.

21  
22 Council President Praisner,

23 Just for the record, new colleagues may not be aware that when the previous Council --  
24 actually might even be previous, previous Council -- dealt with the PRC Zone and  
25 modifications to allow it to be smaller than the size acreage that we're talking about,  
26 currently in the law, the modifications were not all incorporated into or codified. And  
27 therefore, we do have, I think, in general view, a need to reduce the size of the lot  
28 acreage required to apply a PRC zone.

29  
30 Greg Russ,

31 Yes.

32  
33 Council President Praisner,

34 And some of the -- and these changes being proposed are somewhat consistent with  
35 what was discussed before the Council and which the Council thought it had codified.

36  
37 Greg Russ,

38 Yes.

39  
40 Council President Praisner,

41 Mr. Knapp

42  
43 Councilmember Knapp,



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1 Thank you, Madam President. I appreciate all the comments of everyone who testified  
2 today. And when I introduced the ZTAs -- I guess a month or so ago -- I made similar  
3 comments to what I'll make now, and actually very consistent with what Mr. Humphrey  
4 and Ms. Barnes have indicated as well -- that this is not an attempt to try to usurp the  
5 master plan process, but a way to engage in the discussion to find the best way to have  
6 a potential limited modification to a master plan that would allow for a zone like the PRC  
7 Zone to potentially move forward. I suppose there are times when it's dangerous to be a  
8 politician who's not necessarily an attorney because attorneys are trained to not ask  
9 questions unless you know the answer; and I actually think sometimes in the legislative  
10 process it's beneficial to ask those questions when the answer may not be known, but  
11 sometimes will stimulate the conversation. So that --

12  
13 Councilmember Berliner,  
14 You did stimulate the conversation.

15  
16 Councilmember Knapp,  
17 And that's what I like to try and do. So no. That was the attempt to do this because to  
18 put the PRCs -- or at least the guidance I received -- out there by itself without  
19 something to modify its potential conformance with the master plan was likely to result  
20 in having a modification to the PRC zone, but likely not to result in anyone actually  
21 being able to use it. So we put both of the ZTAs out there for feedback at the same  
22 time; and so I appreciate your feedback to the Council President because those are the  
23 same questions I was going to ask you as to the timing of the Planning Board. And I  
24 would also, to Mr. Humphrey and Ms. Barnes, indicate -- as I had to Jim already -- that I  
25 would be very happy to sit down and talk about potential alternatives. And so I did send  
26 invi -- actually requests out to some people to meet. And so it's a big world out there,  
27 and so it's a matter of how many people want to get together and talk. I was actually  
28 trying to limit the amount of time people would have to spend. I figured this would be a  
29 good way to actually have that dialogue. And to Mr. Kline, I appreciate the notion of a  
30 more targeted approach, and would be very interested to sit down and have that  
31 conversation with you as well. I -- in no way do I expect that what has been introduced  
32 is the answer, but a potential way to get the dialog started and use that as a beginning  
33 point in the conversation to figure out what modifications need to be made. So I  
34 appreciate everyone's feedback and input as it relates to the WEB tract piece; but  
35 should we be so far down the road as to even have that conversation right now, but if  
36 we can get through some of these earlier hurdles, then we may have to have the  
37 conversation as it relates to the WEB tract and the Airpark, but that's a much broader  
38 conversation to have once we get some other things taken care of. So I appreciate your  
39 feedback, and we've already started that dialogue as to a way to proceed or not  
40 proceed. So thank you all very much.

41  
42 Council President Praisner,  
43 Nancy Floreen,  
44



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1 Councilmember Floreen,  
2 Thank you, Madam Chair. Jeffrey, I was reading your cover memo on 06-26, the  
3 development plan findings issue; and you're referring to an October decision last fall  
4 about where this debate apparently erupted with respect to substantial compliance.

5  
6 Jeffrey Zyontz,  
7 Yes.

8  
9 Councilmember Floreen,  
10 I thought this was about the PD Zone –

11  
12 Jeffrey Zyontz,  
13 It was.

14  
15 Councilmember Floreen,  
16 in that case in Gaithersburg. Is that what you're referring to here?

17  
18 Jeffrey Zyontz,  
19 That is correct. That is what I was referring –

20  
21 Councilmember Floreen,  
22 So you were talking about that, PD. I guess Mr. Knapp was talking about PRC.

23  
24 Jeffrey Zyontz,  
25 As this amendment is structured, it affects 12 zones; and they're listed in the Planning  
26 Board's memo.

27  
28 Councilmember Floreen,  
29 Because apparently, we were the only ones -- not the Planning Board -- to actually read  
30 the PD Zone to see that it required a base residential density. I think that's -- apparently  
31 there was an only case prior to that time that had suggested a different direction and  
32 was interpreted by the legal community to allow other things. I think there was a  
33 problem perhaps in all of this; but I just have to say, you know, our rules are what, you  
34 know, Jim and Natalie and Ginny have referred to in terms of classic approach to  
35 looking to the master plan. I think, you know, the challenge here is, if you want to  
36 change it, you have to go through an annoying process that takes a long time. And, you  
37 know, perhaps that's what Marilyn was referring to.

38  
39 Council President Praisner,  
40 It is.

41  
42 Councilmember Floreen,  
43 The other challenge, though, is looking at the right kind of commercial zones that permit  
44 some flexibility. Really from the community's perspective, they might much rather have





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1 a residential development that's less demanding on resources or -- depending on how  
2 you look at it -- than a commercial project, which was the case in White Flint a while  
3 back. But I think it goes to the question of work in progress, I think, as Marilyn indicated,  
4 as to looking at our Zoning Ordinance; and I think we all are going to have to face up to  
5 whether there's -- you know, how much predictability are people willing to buy into in  
6 terms of the master plan. If you say it can be "Commercial" or "Residential," you really  
7 haven't said much. And that is one of our challenges in terms of a master plan and in  
8 terms of a zoning text process. I just have to say I think it was just an interesting  
9 exchange here because I really had been thinking about that other case where  
10 apparently we made waves by saying, If you're going to rezone something to the PD  
11 zone, it should be based on a residential base. So, the question of -- and I just have to  
12 say to my colleagues, I think we do want to be careful about getting ahead of the  
13 Planning Board on these kinds of issues; because they're difficult and they're  
14 complicated; and the more we amend one portion, then when we go back, we're just  
15 going to make it harder. Mr. Kline, what was the -- I didn't quite get your comment, apart  
16 from the fact that you apparently have a free afternoon. (Laughter.).

17  
18 Jody Kline,  
19 I actually wanted to come over and get a seat early for your hearing this evening.

20  
21 Councilmember Floreen,  
22 Fair enough. Fair enough. But were you referring to the PRC issue?

23  
24 Jody Kline,  
25 Well, no. Actually, you are correct: G-841, which was --

26  
27 Councilmember Floreen,  
28 I don't know what that one was.

29  
30 Jody Kline,  
31 That was the -- it was a PD --

32  
33 Councilmember Floreen,  
34 It was a PD.

35  
36 Jody Kline,  
37 It was a PD application at Shady Grove --

38  
39 Councilmember Floreen,  
40 Yeah. Yeah.

41  
42 Jody Kline,  
43 from a C-2 to a PD44.



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1 Councilmember Floreen,  
2 Right. Yeah.

3  
4 Jody Kline,  
5 And the issue was that housing –

6  
7 Councilmember Floreen,  
8 Oh yeah.

9  
10 Jody Kline,  
11 was not allowed in the zone until after the master plan had been adopted. And your  
12 conclusion was, Nobody picking up the plan could have assumed that residential would  
13 ever occur on the property.

14  
15 Councilmember Floreen,  
16 Right.

17  
18 Jody Kline,  
19 And as I said, without getting into specifics, there were two other cases in the pipeline  
20 that were "distinguishable" because they had underlying commercial zones which  
21 already had residential –

22  
23 Councilmember Floreen,  
24 Included a residential element. So that was the tension –

25  
26 Jody Kline,  
27 And they are essentially on hold while this sort of works itself out. We're trying to find  
28 the vehicle so that you can get the precision you want and the expectations realized,  
29 and yet still satisfy the master plan guidelines.

30  
31 Councilmember Floreen,  
32 So that -- You're saying that there are a couple of cases where -- people have been  
33 reading a lot of tea leaves, I guess, with respect to the Council's intention on this. I  
34 guess -- and I don't know if it would be ex parte, but I would like to understand what the  
35 zones are -- those actual zoning categories are that are now in question.

36  
37 Jeffrey Zyontz,  
38 If I may, I'll be happy to bring the zoning –

39  
40 Councilmember Floreen,  
41 If you can provide that.

42  
43 Jeffrey Zyontz,  
44 Right . The zones and questions are not ex parte; the particular facts of the –



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1  
2 Councilmember Floreen,  
3 Yeah. I don't care about the facts of those particular applications --

4  
5 Jeffrey Zyontz,  
6 It does involve the application of a PD Zone.

7  
8 Councilmember Floreen,  
9 Okay. They all do?

10  
11 Jeffrey Zyontz,  
12 I believe so, yes.

13  
14 Councilmember Floreen,  
15 But it's a question of what's the underlying zone, I guess.

16  
17 Jeffrey Zyontz,  
18 Correct.

19  
20 Councilmember Floreen,  
21 If you could, you know, give us a memo or some -- or a little background on all that --

22  
23 Jeffrey Zyontz,  
24 Okay.

25  
26 Councilmember Floreen, 119  
27 That would be helpful. Thank you.

28  
29 Council President Praisner,  
30 It seems to me also, though, it's not just the zone or what the zone may say. It's whether  
31 - what the language in the master plans may say, because there's lots of property that is  
32 zoned "Commercial" or "Industrial" within master plans that may not have the specificity  
33 of going further to say something specifically is prohibited from occurring there or  
34 providing additional guidelines on the parcel. That -- that's the WEB tract which  
35 continues to bring our friends from the airport out in order to make sure that we  
36 remember how it relates -- how a "zone" and a "language" in the master plan relates to  
37 a specific reuse or use. There's lots of property that is commercial that we don't even  
38 review in the master plan because we continue the zoning and it's --probably not in the  
39 mind of the property owner or the neighbors, but in the mind of everyone else --  
40 uncontroversial and not significant. And so, therefore, we don't specifically write  
41 anything into the master plan process. It is what the zone says, as Ms. Floreen  
42 indicated, what the rules are for that rezoning category; but it's also what specific  
43 language is written in the master plan -- and that is not necessarily "zone" specific, it's  
44 "use" specific. And that's the issue we will have to grapple with.



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Councilmember Floreen,

Well, let's ask Mr. Zyontz to include that -- if there's relevant language to that -- so we could understand the contours of the problem that we appear to be required to solve. Ms. Barnes, did you have a comment that I needed to hear on this?

Ginny Barnes,

I just -- Marilyn may have covered it, but I think there's a complication here in dealing with this ZTA as it relates to this particular property which is with the packet from the Planning Board that kept the linkage going and obviously why. But I think the threat to the Airpark is something that is very -- of great concern to a lot of people who live in this County -- who value the fact that it's there.

Councilmember Floreen,  
Sure.

Ginny Barnes,

So I just want to make sure that you recognize that everything gets complicated by the fact that it's related to this particular site, which is -- we want to keep.

Councilmember Floreen,  
Yeah. Thanks.

Council President Praisner,  
Mr. Leventhal.

Councilmember Leventhal,

This conversation gives me the opportunity to make a couple of points. One is that -- some of my colleagues have heard me say this before -- I think Euclidean zoning is the culprit in some of our most serious problems that we face, including excessive carbon emissions, the onset of child and adult obesity. I mean, years ago the decision was made that a nice, quiet neighborhood was one that was far from job, shopping, and industrial uses; and we now find that we need automobiles to get anywhere and do anything as a result of Euclidean zoning. And the master plans are many years old. The zones were developed in the post World War II era; and consistently the Planning Board and the County Council face the challenge of modernizing our zones to bring them into the new vision: that you ought to actually live really close to where you work and really close to where you shop. And that is radically different than what our zoning map looks like and most of our master plans call for. I don't -- I think I understand what Mr. Knapp was trying to do. I'm not, you know -- clearly the ZTA appears to be overbroad, and I think Ginny and Jim's comments are on target, generally. I do want to point out, though, that one of the things that I asked the Planning Board for a few years back -- and I know it's a busy organization and isn't always able to get to, but I would still like to revive discussion in this Council -- is: How can we take a look at industrial zones for housing



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1 the homeless? On Friday morning, I and some of my colleagues are going to visit the  
2 Seneca Heights Project which -- although it's in the city of Gaithersburg, it isn't one of  
3 our zones -- is located in a commercial zone; and as a result, the opposition from  
4 neighbors was less than it otherwise might have been if, you know, housing had been  
5 located in a housing zone or residential zone. In the future, if we get -- ever get serious,  
6 which we haven't really been much serious in the past about housing homeless people -  
7 - industrial zones provide opportunities and the restrictions on availability of parking for  
8 residential purposes are less relevant because formerly homeless people don't use as  
9 many cars. And so I still hope that we can have that conversation; but since it is not a  
10 concept that has existed to date and we haven't really been much interested in housing  
11 the formerly homeless to date, our master plans probably won't allow for it, and it may  
12 require the Planning Board to sort of take a look at some of these issues that Mr. Knapp  
13 was raising here about floating zones. So I -- you can relay that back, Greg, to  
14 whomever. It was something that former chairman Berlage and I had had some  
15 conversations about. Ultimately, it was supposed to be something that the Planning  
16 Board was going to take up; but, you know, other things have intervened. I also want to  
17 ask my friends Ginny Barnes and Jim Humphrey what I heard Ginny Barnes refer in her  
18 "beloved aunt" category, or in her role as the "gentle aunt" that master plans are actually  
19 like a bible. I mean -- and both Ginny and Jim indicated their belief that master plans are  
20 hallowed and honored and venerated. And I just wondered whether those include --  
21 whether the views -- your views include the recommendations to build the Intercounty  
22 Connector, to build M-83, and to build the Purple Line above ground on the Georgetown  
23 Branch right of way -- all of which are called for in our master plan?

24  
25 Ginny Barnes,

26 Can I answer you? That's not exactly what I said. I said those of us who view our master  
27 plan, you know, treat them like -- I was making a joke. But it is true that -- I mean, my  
28 master plan has just been revised in the last five years; and while, you know, it doesn't  
29 have everything in it I would like to see in terms of modern thought, it does -- it has  
30 been brought up-to-date and, in some respects, to the detriment of the master plan. But  
31 that's progress, right? So, I don't want you to think that I'm saying that it is the Bible. I'm  
32 saying that we tend to treat it as something that we need to defend is what I meant. And  
33 I think that's correct.

34  
35 Council President Praisner,

36 We have two more public hearings and a couple of more lights; so let's move on unless,  
37 Jim, you really feel a need to answer Mr. Leventhal's question.

38  
39 Jim Humphrey,

40 Simple remark -- and that is that, in my testimony, what I said was that there needs to  
41 be a degree of dependability in master planning that the property owners, the  
42 developers, and the communities -- residents of the communities as well need to be  
43 able to depend on master plans. There needs to be a predictability factor. And that  
44 brings me back to the point that Council President Praisner made about master plans



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1 where they do not -- where they impose a zone category on a property, but don't have,  
2 for instance, a prohibition for all those other uses that aren't currently included in the  
3 zone. The alternative to having, you know -- and that's one of the reasons that the Civic  
4 Federation is endorsing this concept of a mini master plan amendment -- because the  
5 alternative for the Council then, if you find that the master plan has imposed a zone but  
6 there's no prohibition for an alternative use, is to amend that zone category -- like you  
7 did with the commercial zone category -- to allow residential use. And there -- then you  
8 end up having hybrid animals, which neither the previous councils or the Planning  
9 Board or the community intend. You know. we now have a commercial zone category  
10 that isn't a "commercial zone" category; it's a "mixed use zone" category. So a mini  
11 master plan amendment will allow us to keep clarity of zoning categories in place, as  
12 well as allow some predictability for master planning. Thank you.

13  
14 Council President Praisner,  
15 Thank you. Mr. Elrich.

16  
17 Councilmember Elrich,  
18 I can't resist.

19  
20 Council President Praisner,  
21 Try. (Laughter)

22  
23 Councilmember Elrich,  
24 I was going to subdue myself; but I think George opened the door, and I feel inclined to  
25 walk through. If we're going to talk about the importance of living close to where you  
26 work and ending long commutes and building a road that's primarily built to facilitate 20-  
27 , 30-, 40-mile one-way trips to get to work is hardly reflective of the new reality and  
28 hardly environmentally responsible. And if we're talking about the need to change  
29 master plans to reflect the new realities, I think changing the master plan to get rid of  
30 the ICC is, in fact, a very responsible thing to do to reflect the new reality that this planet  
31 -- as you have talked about over and over again -- is overheating out of control; and  
32 facilitating endless driving is not a way to deal with that problem. But more to the point  
33 of what's before us here -- what I would -- the question I'd like or the issue I'd like you to  
34 bring back to the Planning Board is that I understand that there's a lot of frustration with  
35 the fact that we are far too long between master plan revisits. And it's one of the primary  
36 problems in the County is we're not doing them every 10 years. You're lucky if it's 15  
37 years. I remember the first time I was involved in the Silver Spring master plan. It was  
38 forever. And reality does change on the ground. And with no visits in between, it's  
39 tempting to do a lot of things that I think are mischievous -- sometimes with good  
40 intentions, sometimes just kind of haphazardly because you want to do something. So I  
41 favor a process that would let us go into master plans and do some revisiting; but I think  
42 one caveat on the process has to be some kind of time frame before you can go back  
43 and revisit. In other words, if a community goes through a one- or two-year master plan  
44 process, -- or a three-year -- there is no reason for one year or two years after the





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1 master plan is done -- there should be no reason -- to come back in and say: Reality's  
2 changed; we need to revisit this. Surely -- I mean, it's difficult to project reality two  
3 decades out. It ought to be fairly simple after a three-year process to have a sense of  
4 what's going to happen over the next two to five years. And for that there ought -- I think  
5 there ought to be absolute certainty. I think when you get toward the end of what ought  
6 to be a reasonable master plan period, I think it makes more and more sense to be able  
7 to do small changes -- particularly since, even though I think the end of a recent master  
8 plan is ten years, I've had no indication from Park and Planning that they're going to be  
9 able to get on a ten-year schedule any time soon. So I would like the flexibility; but I  
10 don't want the flexibility to be an open door to simply say the day after the plan is done,  
11 we have a new reality. And that's all I have to say.

12  
13 Council President Praisner,  
14 Roger.

15  
16 Councilmember Berliner,  
17 This is my --

18  
19 Council President Praisner,  
20 Mike (microphone).

21  
22 Councilmember Berliner,  
23 One day I will learn how to do that.

24  
25 Council President Praisner,  
26 Yeah. That's okay.

27  
28 Councilmember Berliner,  
29 This is my first public hearing, and I just wanted to express my appreciation to this  
30 panel. I thought the presentations uniformly were very helpful to me. Ms. Goldberg, for  
31 me to now fully appreciate the "unintended consequences" if you will of this proposal on  
32 our community, it's very helpful. Ms. Barnes, you and I had had a conversation with  
33 respect to this; and I was very grateful for your constructive engagement with my  
34 colleague with respect to this, and so I just wanted to thank you for that. And, Mr. Russ,  
35 I think it is clear that many of us are eager to hear back from the Planning Board with  
36 respect to a more surgical means of addressing changes that perhaps everyone agrees  
37 should take place, but in a context in which everyone's rights are, in fact, protected --  
38 much like the master plan's process. So I hope you will report back to your appropriate  
39 folks that we're looking forward to hearing from, alternative ways in which this issue can  
40 be addressed.

41  
42 Council President Praisner,  
43 Thank you all very much. I found this whole conversation very helpful. Good afternoon,  
44 ladies and gentlemen. This is a public hearing on Zoning Text Amendment 06-27 --



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1 Planned Retirement Community Standards, which would amend the purpose, provision,  
2 and development standards of the PRC Zone to allow development to occur on smaller  
3 tract areas and generally amend the PRC Zone. Persons wishing to submit additional  
4 material for the Council's consideration should do so before the close of business on  
5 January 23rd. The PHED Committee work session is tentatively scheduled for February  
6 5th at 2 p.m. Please call 240-777-7900 to confirm. Before beginning your presentation,  
7 please state your name and address clearly for the record and spell any unusual  
8 names. We have two speakers, Robert Gould and Jolene Zangardi. Mr. Gould. Is Mr.  
9 Gould here? Mr. Gould is not here. Jolene, it's up to you

10  
11 Jolene Zangardi,

12 I'm Jolene Zangardi, Vice President of the IDI Group Companies, developers of Leisure  
13 World, 14901 Pennfield Circle, Silver Spring. I'm here to support the effort of reviewing  
14 and improving the text of the PRC Zone, and I'd like to recognize that most of the  
15 changes proposed are an improvement for the applicability of the Zone to smaller  
16 parcels. However, I suggest that the Council take this opportunity to bring the Zone into  
17 the 21st century. Since the Zone's creation more than forty years ago, Leisure World  
18 remains the sole age-restricted community built in the County using this Zone. As  
19 developers of Leisure World, we are intimately familiar with the Zone and are interested  
20 in its survival beyond Leisure World's completion. In contrast with Montgomery County's  
21 single active adult community, neighboring Howard County has 16 communities  
22 existing, 22 communities in the works. Loudoun County has six communities under its  
23 comparable active adult zone, which is only ten years old. Please remember the value  
24 of encouraging senior housing and the importance of retaining senior population that will  
25 otherwise move out of the area because of lack of suitable housing. The senior  
26 population will continue to conduct regular activities in the community -- shopping,  
27 buying services, paying taxes -- all with minimal impact on County-provided services,  
28 traffic, no impact on schools. Please focus on the changes proposed in lines 158  
29 through 165. The current Zoning Ordinance allows that the maximum density permitted  
30 may be increased by one dwelling unit per acre for each MPDU included. With the  
31 changes proposed, you are, in effect, reducing the density by one unit per acre. If  
32 MPDUs have to be provided within the base density, the feasibility of projects in the  
33 PRC would be compromised; and other unit prices necessarily have to rise in order to  
34 carry the land cost now in 8.75 market units per acre versus 10. The affordability of all  
35 units within the PRC would be seriously affected by this change. Current development  
36 in the PRC has reasonable prices for all units, well below comparable product  
37 elsewhere in the County.

38  
39 Council President Praisner,

40 (Time indicator) If you could just summarize the last point?

41  
42 Jolene Zangardi,

43 Summarize? Okay. We suggest that in the PHED Committee work session, you take  
44 advantage of the opportunity to review heights, setbacks, density that would truly



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1 encourage development in this Zone and consequently increase senior housing in the  
2 County.

3  
4 Council President Praisner,

5 Thank you very much. We certainly will; and I hope you'll join us or someone from IDI  
6 will join us at the Committee meeting. I don't think you're reading the proposal on the  
7 Zoning Ordinance for MPDUs exactly the way it's intended. Mr. Zyontz, do you want to  
8 comment for the record?

9  
10 Jeffrey Zyontz,

11 Yes, thank you. This MPDU revision reads exactly like it is for every other zone. There -  
12 - it's true right now you get no bonus for 12 and one-half percent at 15 percent provision  
13 of MPDU. You get one for one. If you provide more than that, you actually get a bonus  
14 of market rate housings as well. So you get -

15  
16 Council President Praisner,

17 So it's consistent with the MPDU proposal?

18  
19 Jeffrey Zyontz,

20 Absolutely.

21  
22 Council President Praisner,

23 Okay. Good. Thank you all very much. We have one more public hearing: Good  
24 afternoon. This is a public hearing on a Supplemental Appropriation to the FY07  
25 Operating Budget, Non-Departmental Account, for Future/Federal/State/and Other  
26 Grants in the amount of \$8 million. Action is scheduled following the hearing. There are  
27 no speakers, so the hearing is closed. I would entertain a motion to approve the  
28 supplemental appropriation, which actually is just to allow the County more capacity to  
29 accept and expend funds for federal grants, et cetera. We create an amount and, in this  
30 case, we're setting the amount for an additional \$8 million. Is there a motion? Ms.  
31 Trachtenberg. Is there a second?

32  
33 Councilmember Floreen,

34 Second.

35  
36 Council President Praisner,

37 Ms. Floreen. All in favor please indicate by raising your hand. That is unanimous. The  
38 Council is adjourned until 7:30 p.m., where the public hearing this evening will be held in  
39 the third-floor hearing room; and, as I would remind Council members, we have guests  
40 from the agriculture community who are available on the sixth floor to meet with Council  
41 members and their staff should you be available. We're adjourned until this evening.